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EXAMINER

SRIVASTAVA, V

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

Application No. 081932, 039	Applicant(s) JACKSON
Examiner V. S. [Signature]	Group Art Unit 3735

Part of Paper No.

A

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It is noted that the abstract of the disclosure consists of two paragraph. It should be limited to a single paragraph. It should be corrected.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 - 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 6/7 and 15/16, the phrase "the egress of gas" is unclear as what is being claimed. It has no proper antecedent basis. For similar problems note claim 19.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 16 and 34 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. There is no clear teaching of the recitation "the diaphragm is a speech transmission diaphragm". It is not clear what specific feature would characterize the diaphragm as a speech transmission diaphragm.

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The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the recitation in claim 19, lines 2 and 3 claiming "a reservoir of a breathable gas at superambient pressure" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 - 6, 8, 12, 13, 17, 18, 19, 20 - 24, 26, 30, 31 and 35 - 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Kruger et al (Pat. # 5,499,624).

With respect to claims 1, 19 and 41, note Kruger et al teach a face piece (2) as illustrated in Fig. 1, comprising:

a supply valve (12) for delivering gas to the interior of the face piece as taught in Col. 4, line (43); and

an exhaust opening (31) closable by an exhaust valve (7), wherein the exhaust valve comprises a movable diaphragm (9) which in first position closes the exhaust opening in the face piece as taught in Col. 4, lines (9 - 11), the diaphragm being movable to a second position as taught in Col. 4, lines (17 - 32) and finally to a third position as taught in Col. 4, lines (32 - 37).

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With respect to claims 2 - 6 and 20 - 24, note the teaching in Col. 4, lines (7 - 16) as illustrated in Figs. 1 and 2.

With respect to claims 8, 12, 13, 26, 30 and 31, note the teaching in Col. 4, lines (20 - 29).

With respect to claims 17, 18, 35 and 36, note Fig. 1.

With respect to claims 37 - 40, note the hood (2).

With respect to claim 42, note the cover (2) which is illustrated in Fig. 1.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 9 - 11, 14, 15, 25, 27 - 29, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kruger et al as applied to claims 1, 8 and 13 above, and further in view of Hansen (Pat. # 5,749,359).

With respect to claims 7, 9 - 11, 25 and 27 - 29 regarding adjustment means, Kruger et al broadly teach in Col. 3, lines (40 - 49) a compensation piston for regulation means, but do not teach any fixed adjustment means. Hansen teaches in Col. 4, lines (6 - 11) a plurality of adjustment means which are conventionally known.

Similarly, with respect to claims 14, 15, 32 and 33 note element (14B) which is illustrated in Fig. 2, of Hansen. The use of any suitable adjustment means for providing adjustability

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between two elements and the use of a latch and detent in view of Hansen would have been obvious to one having an ordinary skill in the art as an obvious choice among conventional mechanical expedients.

Claims 16 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kruger et al as applied to claim 1 above, and further in view of Gongoll et al (Pat. # 3,109,425).

Kruger et al is silent about the diaphragm being a speech transmission diaphragm. Note Gongoll et al teach in Col. 1, lines (10 - 12) such a diaphragm. It would have been obvious to one of ordinary skill in the art in view of Gongoll et al to have provided the face piece of Kruger et al with a diaphragm for speaking and exhalation both.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the teachings of Walther (Pat. # 4,572,176), Lewis (Pat. # 5,042,473) and Berlin (Pat. # 5,572,990).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to V. Srivastava whose telephone number is (703) 308-0959.

vs 

October 13, 1998

John G. Weiss  
Supervisory Patent Examiner  
Group 3700